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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. ~~444~~ 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., TO AFFIRM

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Counsel for Appellees.

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Atlantic Coast Line Railroad Company and other railroads operating in the State of Florida, intervening defendants-appellees, believing that the matters set forth below demonstrate the lack of substance in the questions

raised by this appeal, pursuant to the provisions of Rule 12, paragraph 3, of the Rules of the Supreme Court file this their motion to affirm the judgment of the court below.

I

The Issue Primarily Raised by This Appeal

Appellant's Jurisdictional Statement, under the caption "Questions Presented", contains the following:

> "1. Does the Interstate Commerce Commission have authority to require railroads to increase their intrastate freight rates generally to enable said carriers to meet deficits incurred from their passenger operations?
>
> "2. Can intrastate shippers and receivers of freight be required lawfully by common carrier railroads to pay excessive and unreasonably high freight rates in order that said railroads may be able to recoup losses sustained through the operation of their passenger service?"

That the questions thus set out represent the issue primarily raised by appellant is recognized in the opinion of the court below (Appendix "a" to Jurisdictional Statement) wherein the court stated:

> "The question, therefore, before the court is—may the Interstate Commerce Commission increase freight rates generally to enable the carriers to meet deficits incurred from passenger operations?
>
> "Plaintiffs contend this may not be done; that every branch of the service must contribute its proper share of the costs of operation and return on the property devoted to each class of service. They rely upon the 5% Case, 31 I. C. C. 351, Northern Pacific Railway v. North Dakota, 236 U. S. 585, Norfolk & Western Railway v. West Virginia, 336 U. S. 605, and other cases to the same effect."

II

Statement of Facts

In proceedings known as Ex Parte No. 162, *Increased Railway Rates, Fares and Charges, 1946*, 266 I. C. C. 537, and Ex Parte No. 166, *Increased Freight Rates, 1947*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, and 270 I. C. C. 403, the Interstate Commerce Commission, acting in pursuance of the authority and duty vested in it by Sections 13(2) and 15a(2) of Part I, Interstate Commerce Act (U. S. C. Title 49, Sections 13(2) and 15a(2)), and by the declaration of National Transportation Policy which now appears as a preliminary part of said Act (54 Stat. 899; 49 U. S. C. 4281 (1940)—see Appendix), conducted successive general investigations of the interstate freight rates and charges of the railroads throughout the country. Upon a showing by the railroads of rapidly mounting operating costs, due particularly to repeated increases in wage costs, increased costs of materials and supplies and increased taxes, and the urgent need of revenue to enable them to maintain adequate transportation service, the Commission authorized successive general percentage increases in basic interstate freight rates and charges with increases in varying amounts in the case of certain particular commodities.

In the first proceeding, Ex Parte No. 162, the Commission made the following finding (266 I. C. C., at p. 614):

> "1. It is requisite for the carrying out of the purposes of the national transportation policy, and the development, coordination, and preservation of a national transportation system adequate to meet the needs of commerce, the postal service, and the national defense, and in order that freight rates and charges shall be such as to move the greatest volume of traffic, while providing adequate and efficient transportation at the lowest cost consistent with the furnishing of such

service, and to enable the petitioning carriers by railroad and by water under honest, economical, and efficient management to provide such service, that there be substantial increases in the basic freight rates and charges of the petitioners, and the continued maintenance of the present temporarily increased basis of passenger fares and charges."

In the second proceeding, Ex Parte No. 166, upon a showing by the railroads that they had been confronted with additional and substantial increases in wages of employees, as well as further increases in costs of materials and supplies and taxes, the Commission on account of the emergency of the situation at first authorized immediate additional increases in interstate freight rates and charges which were in the nature of interim increases to continue pending completion of the investigation. In authorizing such emergency interim increases the Commission stated in the Ex Parte No. 166 report of October 6, 1947 (269 I. C. C., at p. 53):

"We are fully conscious of the fact that freight rates must be paid by shippers and receivers of freight and ultimately borne by the commerce of the country. It is clear to us, however, that increasing costs of operation now pose, and unchecked will continue to pose, a serious threat to the maintenance of adequate transportation service; that the railroads as a whole, and many of the most important railroads of the country in particular, are definitely facing such a threat at the present time; that the public vitally needs an efficient transportation service, and imperatively demands a transportation system that is adequate for the national defense in any emergency."

By subsequent reports in the same proceeding the interim increases previously authorized were superseded by general increases as finally approved.

The increases successively authorized were accordingly made effective by the railroads in respect to the interstate rates throughout the United States, including the interstate rates applicable between points in the state of Florida and points in other states as well as elsewhere throughout the south.

In both the Ex Parte No. 162 and Ex Parte No. 166 proceedings, above referred to, the Commission in its consideration of the revenue needs of the railroads dealt throughout with the results of operations *as a whole*, including both freight and passenger operations. As will appear from the reports in those cases (266 I. C. C., at p. 605, 270 I. C. C., at p. 425) the Commission had before it and duly considered the fact that following the war years and commencing in 1944 the railroads of the country had sustained, and were continuing to sustain, serious and unavoidable losses in connection with their passenger service. In recognition of the fact that railroad revenues are derived to a substantial extent from intrastate traffic in the several states, the Commission in determining the amounts of the authorized rate increases and estimating the anticipated increase in railroad revenues to be derived therefrom also took into account the revenue derivable from both intrastate and interstate operations. Anticipating that the various state commissions would be requested to authorize corresponding increases in intrastate rates, a designated committee of cooperating state commissioners was invited to and did sit with the Federal Commission during the hearings and at the oral arguments and thereafter participated in its deliberations.

In the final report in Ex Parte No. 166 (270 I. C. C., at p. 463) it was stated that the Committee of Cooperating State Commissioners "authorize us to state that they concur

in the foregoing report." It was also said (270 I. C. C., at p. 440):

> "Considering the entire record upon this feature of the proceeding, we conclude that the orders heretofore entered, *especially when action by the State authorities is finally completed upon the carriers' proposals*, meet the emergency needs of the petitioning carriers, as shown by the record, supplemented by examination of the reports and returns which we are privileged to use under the general stipulation." (Italics supplied.)

The commissions of various states—including, among others, the states of Alabama, Tennessee, Texas, Arizona and Florida—having thereafter failed and refused to sanction increases corresponding in full with the interstate increases authorized by the Interstate Commerce Commission, proceedings under Section 13(3) (4) of the Act (49 U. S. C. section 13(3) (4)) were instituted in respect to the intrastate rates in each of the states named, as the result of which the Commission after hearings found in each instance that the failure of the state authorities to allow the full amount of increases corresponding with the increases in interstate rates caused undue, unreasonable and unjust discrimination against interstate commerce which by Section 13(4) is forbidden and declared to be unlawful (*Increases in Alabama Freight Rates and Charges*, 274 I. C. C. 439; *Increases in Tennessee Freight Rates and Charges*, 272 I. C. C. 625; *Texas Intrastate Rates*, 273 I. C. C. 749; *Increases in Arizona Freight Rates and Charges*, 270 I. C. C. 105). The Florida Railroad and Public Utilities Commission brought this action to enjoin and set aside the order made in the thirteenth section case relating to Florida rates, *Increases in Florida Intrastate Rates*, 278 I. C. C. 41, whereby the Commission directed a raising of the intrastate rates within Florida by amounts corresponding gener-

ally with the amounts of the increases theretofore authorized and made effective in the interstate rates applicable to and from points in Florida.

The increases so directed in *Increases in Florida Intrastate Rates, supra*, related in part to the entire body of Florida intrastate rates and in part to various commodities and classes of traffic as to which the Florida Commission had either permitted no increases or had authorized increases in amounts less than the corresponding increases in the interstate rates. In its report in that proceeding (278 I. C. C., at p. 65) the Commission found and stated that the differences between the authorized intrastate and interstate increases meant a difference in and loss of revenue to the railroads in an estimated amount of more than $915,325 per annum, and that the great preponderance of this severe loss was falling upon the three principal railroads operating in Florida, namely, Atlantic Coast Line, Seaboard Air Line and Florida East Coast Railway.

III

Appellant's Contentions Unsupported

Upon the issue above stated, and recognized by the court below as the primary issue in the case, the conclusion of the court below was stated as follows:

> "The cases relied upon by plaintiffs to support this proposition were decided prior to 1940 when the Interstate Commerce Act was amended by including therein the National Transportation Policy, which the Interstate Commerce Commission was directed to follow in prescribing rates and charges on all modes of transportation subject to the provisions of the Act, 49 U. S. C., 4281. In Railroad Commission v. Chicago, B & Q Railroad Company, 257 U. S. 563, and again in Florida v. U. S., 292 U. S., 1, the Supreme Court of

the United States held that the Transportation Act, 1920, imposed an affirmative duty on the Interstate Commerce Commission 'to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States.' *An*, again in North Carolina v. United States, 325 U. S., 507, the Supreme Court re-affirmed these earlier holdings and held that where intrastate traffic was not contributing its fair share of the revenue required to enable the carriers to render adequate and efficient transportation service an order of the Intrastate Commerce Commission directing an increase in intrastate rates, for such purpose, would be valid, if supported by evidence justifying the order.

"Relying upon these decisions of the Supreme Court of the United States, this court finds and holds that the Interstate Commerce Commission, in this case, had the authority to enter the order here questioned for the purpose of providing the carriers with needed revenue, even though freight rates were increased beyond the point where such rates provided more revenue than was required to pay the costs for rendering freight services and a fair return on carriers' property devoted to such services."

1. As the court below thus found, the cases cited and relied upon clearly lend no support to appellant's contentions here. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, and *Norfolk & W. Ry. Co.* v. *West Virginia*, 236 U. S. 605 (decided in 1915), both related to the alleged confiscatory nature of transportation charges prescribed by state authority. In the *Northern Pacific case* the Court, adhering to well established principles, held that the state of North Dakota could not justify the imposition by statute of charges for the transportation of lignite coal, such charges having been found to yield revenue less than or barely equal to the computed cost of the transportation of that traffic, upon the theory that the railroad was deriving

adequate revenues from its intrastate business as a whole. In the *Norfolk & Western case*, which followed the *Northern Pacific case* and was decided on the same day, the Court similarly held invalid a statute of West Virginia fixing a passenger fare of 2 cents per mile, as to which it appeared that the revenue derived therefrom would be less than the cost of conducting the passenger transportation.

No confiscation is alleged in this proceeding, which relates solely to questions arising under Section 13(3) (4) of the Interstate Commerce Act. Moreover, both of the above cases cited by appellant were decided long prior to the enactment of the Transportation Act of 1940 and the declaration therein of the "National Transportation Policy" whereby Congress has directed, as the rule of rate making to be observed by the Commission, that all of the provisions of the Interstate Commerce Act shall be administered

> "to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense."

By Section 15a(2) of the Act the Commission is further directed, in the exercise of its power to prescribe just and reasonable rates, to give due consideration

> "to the need in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The general rate increases authorized by the Commission in the Ex Parte No. 162 and Ex Parte No. 166 proceedings were directed to the end of developing and preserving the

national railway transportation system, the maintenance of which the Commission had found to be dangerously threatened on account of the increased operating costs and declining revenues of the railroads. . The increases in Florida intrastate rates as required by the Commission in the thirteenth section case, *Increases in Florida Intrastate Rates, supra,* were likewise directed to the preservation of the national railway transportation system, of which the railroads serving the state of Florida constitute an important part. If the Commission, in dealing alike with the interstate rates and the intrastate rates in Florida, is without authority to consider railroad revenues as derived from their operations *as a whole,* including both freight and passenger operations, it must follow inevitably that the Commission will be powerless to carry out the mandate of the statute. And if continuing and unavoidable losses from passenger operations may not be offset by increases in freight rates, so long as neither the interstate nor intrastate rates are raised to an unreasonably high level, the continued maintenance of an adequate national transportation system must inevitably be defeated. A railroad might conceivably become bankrupt because of irremovable passenger deficits although it could be saved by the application of freight rates which, although higher than they otherwise would be, cannot be said to be unfair or unreasonable. Such question of reasonableness is one for decision by the Commission and upon this question the Commission's ultimate findings, upon the evidence of record, contain the following as Finding No. 3 (278 I.C.C., at p. 72):

> "3. That the present interstate freight rates and charges within Florida and between points in Florida and points in other States are just and reasonable, including those proposed within Florida in I. and S. No. 4646, to the extent above found just and reasonable; and that intrastate rates, charges, and minimum

weights herein approved will not exceed a just and reasonable level."

In recognition of the fact that the findings and order deal with the entire body of Florida intrastate rates, and following expressions of the Supreme Court in *North Carolina* v. *United States*, 325 U. S. 507, and other cases, the Commission also accompanied its findings with the following saving clause (278 I.C.C., p. 74):

> "These findings are without prejudice to the right of the authorities of the State of Florida, or any other interested party, to apply for a modification thereof as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates or charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act."

2. Appellant asserts that the question here raised has never been decided by the Supreme Court. It may be true that such question has not heretofore been presented directly, but it is no less true that the Court in a long line of cases has upheld orders of the Commission under Section 13 similarly directing the raising of intrastate rates where state commissions have refused to sanction increases following general increases authorized by the Interstate Commission, such general increases having been determined upon consideration of revenue needs of the railroads resulting from operations as a whole, including both freight and passenger operations. *United States* v. *Louisiana*, 290 U. S. 70, 78 L. ed. 181; *Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 66 L. ed. 371; *New York* v. *United States*, 257 U. S. 591, 66 L. ed. 385; *Ga. Pub. Serv. Comm.* v. *United States*, 283 U. S. 765, 75 L. ed. 1397; *Alabama* v. *United States*, 283 U. S. 776, 75 L. ed. 1406; *Florida* v. *United States*, 292 U. S. 1, 78 L. ed. 1077.

Appellant relies also upon expressions appearing in the early *Five Percent Case*, 31 I.C.C. 351 (decided July 29, 1914). In recognition, however, of changed conditions brought about by subsequent amendments of the governing statute, the Commission has long since felt compelled to reconsider the conclusions stated in that proceeding, as will appear from a series of later decisions, including *Fifteen Percent Case, 1931*, 178 I.C.C. 539, *Fifteen Percent Case, 1937-1938*, 226 I.C.C. 41, and including also Ex Parte No. 162 and Ex Parte No. 166 as well as the more recent Ex Parte No. 168, *Increased Freight Rates, 1948*, 276 I.C.C. 9.

Appellant has cited no decision of the courts or the Commission which sustains its contentions here. On the other hand, the decisions of the Supreme Court above referred to, as well as many others, amply support the conclusions of the court below.

3. The question here raised by appellant involves necessarily the validity of the Commission's findings and authorizations with respect to the *interstate* rates throughout the United States, including the interstate rates to and from Florida, as made in both Ex Parte No. 162 and Ex Parte No. 166, as well as the findings thereafter made in the thirteenth section case, *Increases in Florida Intrastate Rates, supra*. This proceeding concerns the relationship between the interstate and intrastate rates. Like any similar proceeding under Section 13(3)(*a*), it involves necessarily the reasonableness of the interstate rates to and from Florida, as well as the reasonableness of the intrastate rates applicable within the state. *Georgia Public Service Commission* v. *United States*, 283 U. S. 765; *United States* v. *Louisiana*, 290 U. S. 70. When increases in the interstate rates were authorized, after due hearing, in Ex Parte No. 162 and Ex Parte No. 166 and were made effective by the railroads,

appellant like any other interested parties in said proceedings had every right and opportunity, had they elected to do so, to seek relief in the courts and to raise at that time any and all questions with respect to the power of the Commission to authorize general increases in freight rates for the purpose of offsetting railroad deficits from passenger operations, losses resulting from increased costs of labor, materials and supplies, or losses for any other reasons. Having failed and neglected to take such action appellant is in no position at this late date to raise such question by indirection in this proceeding, which relates to the removal of unlawful discrimination resulting from differences between the intrastate rates in Florida, on the one hand, and the interstate rates already in effect, on the other hand.

IV

Additional Questions

Appellant's statement of "Questions Presented" contains also the following additional questions:

> "3. Does the Interstate Commerce Commission have authority to enter an order requiring state-prescribed intrastate freight rates to be increased to the interstate level in the absence of an affirmative finding as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income?
>
> "4. Does the Interstate Commerce Commission have authority to require railroads to increase state-prescribed intrastate freight rates to the interstate level when said Commission fails to affirmatively find:
>
> (a) What contribution from intrastate traffic will constitute a fair proportion of the railroads' total income;
>
> (b) What amount of revenue is required to enable the railroads to operate efficiently;

(c) That the intrastate railroad rates involved are less than compensatory or insufficient to cover the full cost of service; and

(d) That the maintenance of the intrastate freight rates at the interstate level will be reasonable and is necessary to the operation of a nationally efficient and adequate transportation system?"

The Commission made no order requiring the intrastate freight rates in Florida "to be increased to the interstate level" as here stated. On the contrary, in the thirteenth section proceeding, *Increases in Florida Intrastate Rates, supra*, the Commission merely directed that the intrastate rates be increased generally by amounts corresponding with the amounts of the increases in the interstate rates as theretofore authorized in Ex Parte No. 162 and Ex Parte No. 166 and made effective by the railroads. The Commission also dealt separately with the intrastate rates on certain particular commodities such, for example, as pulpwood, fertilizer and fertilizer materials, and several others, and specifically designated the manner and the extent to which those particular intrastate rates should be increased.

It cannot be asserted successfully that the Commission failed to make all necessary and appropriate findings, supported by evidence, "as to what contribution from intrastate traffic will constitute a fair proportion of the railroads' total income." In the report in *Increases in Florida Intrastate Rates, supra*, which report is made a part of the order, it is stated, at page 67:

"Our power to require an increase in intrastate rates depends upon whether intrastate traffic is contributing its fair share of the earnings required to meet maintenance and operating costs and to yield a fair return on the value of the property devoted to the transportation service, both interstate and intrastate. *Respond-*

ents are not seeking an increase in the intrastate revenue sufficient to give them a fair return on the value of their property devoted to freight service but merely to secure a contribution to maintenance and operating costs, including taxes, more nearly proportionate to the contribution thereto made prior to the increases in Ex Parte No. 162 and Ex Parte No. 166. We may properly use such prior contribution as a valid criterion of fairness, in the light of which the Florida intrastate rates and charges in 1947 and 1948 afforded a disproportionately small share of the revenue required to meet the costs of the service in Florida. This condition has been aggravated by the continuing rise in operating expenses following Ex Parte No. 162 and Ex Parte No. 166, which impelled us to authorize additional increases in freight rates and charges in Ex Parte No. 168." (Emphasis supplied.)

The Commission, in other words, recognized that the earnings of the Florida railroads had fallen to such a low level that the increases proposed in intrastate rates, even if such increases should be allowed, would be wholly insufficient to enable these railroads to earn a fair return upon the value of their properties, and that they were seeking merely to secure a contribution from this traffic to maintenance and operating expenses proportionate to the contribution made prior to the general rate increases authorized in Ex Parte No. 162 and Ex Parte No. 166 in order to meet heavily increased costs of operation and declining revenues. The Commission found that the "fair proportionate share" to be contributed by the Florida traffic was the same proportionate share which such traffic had theretofore been contributing.

We know of no decision of the Supreme Court to the effect that before the Commission may order a raising of intrastate rates under Section 13(3)(4) of the Act it must do the impossible and undertake to name in dollars and

cents the amount of revenue which the railroads require in order to enable them to "operate efficiently." The railroads, of course, must be and are operated efficiently, in times of depression as well as times of prosperity, but even though so operated their earnings, by reason of lack of traffic or unduly low rates, may fall to a level which threatens their ability to provide "adequate" transportation service within the meaning of Section 15a of the Act.

Neither do we understand that the Court has ever declared that as a condition precedent to the making of an order under Section 13(3)(4) the Commission must affirmatively find that the intrastate rates are "less than compensatory or insufficient to cover the full cost of service." In *North Carolina* v. *United States*, 325 U.S. 507, upon facts very different from those presented herein, including the fact that the North Carolina railroads were at that time enjoying an unprecedented degree of prosperity, the Court set aside an order by the Commission directing a raising of intrastate passenger coach fares of North Carolina railroads upon the ground that the order was not shown to be "based on adequate findings supported by evidence" (325 U.S., p. 520). The Court mentioned, among other things, that the Commission had failed to "indicate that the North Carolina railroad rates here involved were less than compensatory or insufficient to cover the full cost of service." This, we submit, falls far short of a declaration by the Court that such a finding is essential to the support of an order. A requirement of that sort would obviously defeat the whole intent and purpose of Section 13(4) and would reduce virtually to a state of impotency the power of the Commission under that section. Furthermore, it would render that section wholly unnecessary since if actual confiscation can be shown the carriers have an adequate

and complete remedy by direct appeal to the courts. The order here in question deals with the entire body of the intrastate freight rates in Florida, including hundreds of rates on different commodities and between different points, some of which may be relatively high and others relatively low. It would be utterly impracticable to show with respect to each and every such rate the full out-of-pocket cost of the service and a requirement to that effect would defeat the power of the Commission to proceed in any case of this kind. The Court has time and time again upheld the validity of orders of the Commission and under Section 13(4) although there has been no such showing with respect to cost of the transportation service (see cases cited in paragraph III, *supra*).

With respect to the reasonableness of the interstate rates, as well as the reasonableness of the intrastate rates as increased, we have quoted above the Commission's definite finding upon this subject (Finding No. 3), amply supported by evidence to which reference is made in the report, and the "saving clause" with which the findings were accompanied.

The Commission also made the following finding as Finding No. 5:

> "5. That the Florida intrastate rates, charges, and minimum weights, which are below the level herein authorized, are abnormally low and are not contributing their fair share to the revenues required by respondents to enable them to render adequate and efficient service and to operate profitably, *and thereby accomplish the purpose of the Interstate Commerce Act, and as set forth in the national transportation policy declared by the Congress, to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense;* and that the burden thus cast upon interstate commerce is undue to

the extent that these intrastate rates and charges are less than they would be on the basis herein approved." (Emphasis supplied.)

We submit that the Commission made all findings appropriate and necessary for the support of the order here complained of, and that such findings are adequately supported by evidence as fully summarized and reviewed in the Commission's report.

For the reasons stated, these intervening defendants-appellees move that the judgment of the court below in this cause be affirmed.

ATLANTIC COAST LINE RAILROAD COMPANY, ET. AL.,
Intervening Defendants-Appellees.

By

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September 26, 1951.

APPENDIX "A"

U. S. Code, Title 49, Section 13(2)(3)(4).

"(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commission sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

"(3) Whenever in any investigation under the provisions of this part, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to

hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this part or part III with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this part of part III.

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15a(2).

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service."

National Transportation Policy

54 Stat. 899, 49 U.S.C. 4281 (1940).

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; — all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."